

**BEFORE THE SECRETARY OF STATE  
STATE OF COLORADO**

**CASE NO. OS 2008-0040**

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**AGENCY DECISION**

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**IN THE MATTER OF THE COMPLAINT FILED BY CLEAN GOVERNMENT  
COLORADO AND TOM LUCERO REGARDING ALLEGED CAMPAIGN AND  
POLITICAL FINANCE VIOLATIONS BY DENVER FIREFIGHTERS SMALL DONOR  
FUND.**

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This matter is before Administrative Law Judge (ALJ) Robert Spencer upon the complaint of Clean Government Colorado and Tom Lucero that the Denver Firefighters Small Donor Fund (DFSDF) violated the campaign finance laws by failing to report expenditures to oppose a statewide ballot issue, amendment 54.

The Secretary of State received the complaint October 29, 2008. Pursuant to Colo. Const. art. XXVIII, § 9, the Secretary forwarded the complaint to the Office of Administrative Courts (OAC) for hearing. Hearing was held November 13, 2008. Mark Bender, Esq. represented both complainants. Mark G. Grueskin, Esq., Isaacson Rosenbaum P.C. and Thomas B. Buescher, Esq., Buescher Goldhammer Kelman & Dodge, P.C., represented DFSDF.

**Issues**

DFSDF is a small donor committee organized pursuant to Colo. Const. art. XXVIII, §§ 2(12)(a) and (2)(14) for the purpose of supporting or opposing the election of political candidates. Colo. Const. art. XXVIII, § 7 and § 1-45-108, C.R.S. require small donor committees to periodically file reports of their contributions received and expenditures made. Amendment 54 was a statewide ballot issue proposing an amendment of the Colorado constitution relating to "Campaign Contributions from Certain Government Contractors." Complainants, who are supporters of amendment 54, allege that DFSDF expended money to prepare signs opposing amendment 54 but failed to report the expenditure as required by law.

At the close of Complainants case, DFSDF moved to dismiss the complaint for failure of Complainants to offer any evidence that DFSDF made the expenditure alleged. For the reasons explained below, the ALJ granted the motion to dismiss.

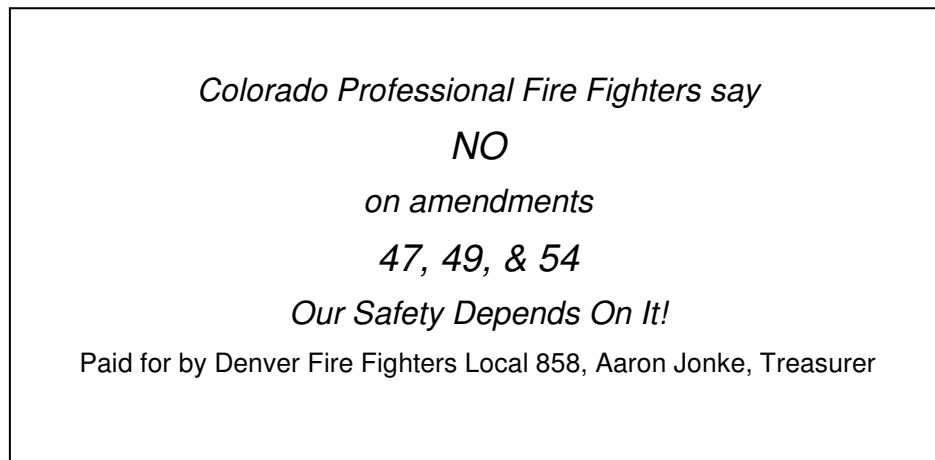
**Findings of Fact**

1. DFSDF is a small donor committee organized pursuant to Colo. Const. art.

XXVIII, §§ 2(12)(a) and (2)(14) for the purpose of supporting or opposing the election of political candidates.

2. Amendment 54 was a statewide ballot issue proposing an amendment to the Colorado constitution relating to “Campaign Contributions from Certain Government Contractors.”<sup>1</sup> Complainants are supporters of amendment 54.

3. Complainants allege that DFSDF paid for advertising that opposed amendment 54 and stated it was “Paid for by DFSDF.” However, the only evidence of advertising offered by Complainants at the hearing was an 18” x 24” black-on-yellow yard sign (Exhibit 1) that contained the following information on both sides of the sign:



4. No where on the sign was there any indication that the sign was paid for by DFSDF. Rather, the sign clearly stated that it was “Paid for by Denver Fire Fighters Local 858.”

5. There was no evidence that Denver Fire Fighters Local 858 was an agent or instrumentality of DFSDF, or that DFSDF was in any way involved in the expenditure of money to pay for the sign.

6. Aaron Jonke is the registered agent of DFSDF. According to the yard sign, he is also the treasurer of Denver Fire Fighters Local 858. However, there is no evidence that, acting as treasurer for Denver Fire Fighters Local 858, Mr. Jonke incurred any expenditure on behalf of DFSDF.

7. DFSDF’s contribution and expenditure reports, filed with the Secretary of State, did not disclose any expenditure for campaign literature in general, or for Exhibit 1 in particular.

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<sup>1</sup> The ALJ takes judicial notice of the title of this amendment from the 2008 State Ballot Information Booklet (Bluebook) at [www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/bluebook/2008Bluebookmainpage.htm](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/bluebook/2008Bluebookmainpage.htm).

## **Discussion and Conclusions of Law**

### *Colorado's Campaign Finance Laws*

The primary campaign finance law in Colorado is Article XXVIII of the Colorado Constitution, which was approved by the people of Colorado in 2002. Article XXVIII imposes contribution limits, encourages voluntary spending limits, imposes reporting and disclosure requirements, and vests enforcement authority in the Secretary of State. Colorado also has statutory campaign finance law, known as the Fair Campaign Practices Act (FCPA), §§ 1-45-101 to 118, C.R.S., which was originally enacted in 1971, repealed and reenacted by initiative in 1996, substantially amended in 2000, and again substantially revised by initiative in 2002 as the result of the adoption of Article XXVIII. The Secretary of State, pursuant to regulations published at 8 CCR 1505-6, further regulates campaign finance practices.

### *Standard Applicable to Motion to Dismiss at the Conclusion of Complainants' Case*

Colo. Const. art. XXVIII, § 9(1)(f) directs that hearings of alleged fair campaign law violations be conducted according to the provisions of the Administrative Procedure Act, § 24-4-105, C.R.S. That section, in turn, adopts the district court civil rules of practice, to the extent practicable. Section 24-4-105(4). Rule 41(b)(1) of the Colorado Rules of Civil Procedure permits the court to grant a defendant's motion to dismiss at the conclusion of the plaintiff's case if "upon the facts and the law the plaintiff has shown no right to relief." If the court grants the motion, the dismissal of plaintiff's case operates as an adjudication upon the merits. The standard is not whether the plaintiff established a *prima facie* case, but whether judgment in favor of defendant is justified on the evidence presented. *City of Aurora ex rel. Util. Enter. v. Colo. State Eng'r*, 105 P.3d 595, 614 (Colo. 2005); *Teodonno v. Bachman*, 158 Colo. 1, 4, 404 P.2d 284, 285 (1965); *Rowe v. Bowers*, 160 Colo. 379, 381, 417 P.2d 503, 505 (1966). When, after considering all the evidence, the trial judge is convinced that there is no basis upon which a verdict in favor of the plaintiff could be supported, it is his duty as a matter of law to sustain a motion for dismissal. *McSpadden v. Minick*, 159 Colo. 556, 413 P.2d 463, 466 (1966). In deciding whether the evidence justifies judgment in favor of DFSDf, the ALJ also considers that Complainants are the proponents of the order finding a fair campaign law violation, and therefore bear the burden of proof. Section 24-4-105(7), C.R.S. ("the proponent of an order shall have the burden of proof").

### *Required Reports*

Colo. Const. art. XXVIII, § 7 contemplates that small donor committees will comply with the disclosure requirements of § 1-45-108, C.R.S. of the FCPA. Section 1-45-108(1) of the FCPA, in turn, requires small donor committees file with the Secretary of State periodic reports of contributions received and expenditures made. Pursuant to Colo. Const. art. XXVII, § 2(8)(a), expenditure "means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of

expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question.”

### *No Evidence of Expenditure*

Complainants allege DFSDf expended money to produce “anti-Amendment 54 election signs ... that say ‘Paid for by DFSDf.’”<sup>2</sup> Yet, the only evidence of any election sign offered by Complainants was a yard sign that opposed amendment 54, but *did not* say “Paid for by DFSDf” nor make any reference to DFSDf whatsoever. Rather, the sign indicates Denver Fire Fighters Local 858 paid it for. There was no evidence that Denver Fire Fighters Local 858 is an alter ego of DFSDf, nor is there any evidence DFSDf had anything to do with the purchase of the yard sign. The only connection between DFSDf and Denver Fire Fighters Local 858, as far as the evidence shows, is that Aaron Jonke is involved with both. That fact, however, is insufficient to prove there is any relationship between DFSDf and Denver Fire Fighters Local 858, and no evidence whatever that DFSDf paid for the sign.

In the absence of any evidence that DFSDf participated in the expenditure of money to produce anti-amendment 54 election signs, the complaint must be dismissed for lack of evidence.

### **Agency Decision**

Complainants did not meet their burden of proving that DFSDf made an anti-amendment 54 expenditure that it failed to report. The complaint is therefore dismissed.

### **Done and Signed**

November 18, 2008

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ROBERT N. SPENCER  
Administrative Law Judge

Digitally recorded CR #2

Exhibits admitted:

Complainant exhibits: 1, 2 and 3

Respondent exhibits: none

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<sup>2</sup> As a type of political committee, small donor committees by definition support or oppose candidates, not issues. Colo. Const. art. XXVIII, § 2(12)(a). Nonetheless, if DFSDf had expended money to oppose amendment 54, it still would have been required to report the expenditure.

## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Mark Bender, Esq.  
P.O. Box 200925  
Denver, CO 80220

Mark G. Grueskin, Esq.  
Isaacson Rosenbaum P.C.  
633 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202

Thomas B. Buescher, Esq.  
Buescher Goldhammer Kelman & Dodge, P.C.  
1563 Gaylord Street  
Denver, CO 80206

and

William Hobbs  
Secretary of State's Office  
1700 Broadway, Suite 270  
Denver, CO 80290

on this \_\_\_\_ day of November 2008.

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Court Clerk